

WILLIAM E. GODWIN

IBLA 83-767

Decided July 24, 1984

Appeal from a decision of the California Desert District Office, Bureau of Land Management, requiring submission of a plan of operations for an access road in a wilderness study area and submission of a bond by mining claimant. CAMC 60717.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Plan of Operations -- Federal Land Policy and Management Act of 1976: Wilderness

Significant alteration and enlargement of an existing access road constructed within a wilderness study area requires approval of a plan of operations.

APPEARANCES: William E. Godwin, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On December 28, 1979, William E. Godwin located the Billie Jo lode mining claim, CAMC 60717, in sec. 28, T. 13 S., R. 23 E., San Bernardino meridian, Imperial County, California. On May 8, 1981, Bureau of Land Management (BLM) employees detected a recently constructed access road over 2.8 miles long which led to the Billie Jo claim. At the claimsite, they found Godwin conducting a small cyanide leaching operation. These BLM employees informed him that since the access road and the mining site were within the Little Picacho Wilderness Study Area #356, the improvements required prior approval pursuant to regulations at 43 CFR Subpart 3802. Godwin's operations were temporarily shut down while he submitted a plan of operations. The plan, which included provision for construction of an access road, was approved December 8, 1981, subject to several mitigating measures. 1/ One mitigating stipulation provided that: "Access routes

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1/ Although BLM is precluded by section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1982), from authorizing impairment of a wilderness study area in the absence of valid existing rights such as a mining claim located prior to the Act supported by a discovery as of Oct. 21, 1976, the plan of operations was apparently designed to facilitate management and control of the existing road.

shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values."

On April 24, 1983, a field examination by BLM revealed that the access road had been bulldozed and graded within the previous month, increasing the area of disturbance by "100% to 200%," or "18-25 acres." Thereafter, the California Desert District Office, BLM, issued a notice of noncompliance with the regulations at 43 CFR Subpart 3802, dated May 17, 1983. The BLM notice stated that: "Your present route and road standards far [exceed] the boundaries observed on May 8, 1981. The plan of operation which was approved on December 8, 1981, did not authorize the additional bulldozing or grading of your access road." BLM informed Godwin that his activities created impacts that cannot be reclaimed to the point of being substantially unnoticeable in violation of 43 CFR 3802.3-2(g) which provides: "No new access routes that would cause more than temporary impact and therefore would impair wilderness suitability shall be constructed in a wilderness study area." BLM ordered cessation of any equipment operation on the road or in the area until Godwin submitted a plan of operations and a \$10,000 performance bond.

Godwin has timely appealed BLM's decision. He argues in his statement of reasons that "this is not a new access route." Appellant points out that his previously approved plan of operations authorized construction of an access road. Appellant contends the prior road was washed out by heavy rain.

[1] Section 603(c) of FLPMA requires that the Department of the Interior manage lands within a wilderness study area "in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c) (1982); Dale F. Gimblett, 60 IBLA 341 (1981). Regulations implementing this management authority require an approved plan of operations for mining activities on lands under wilderness review prior to conducting operations which might impair wilderness values such as construction of access roads, cutting of trees over 2 inches in diameter, or use of mechanized earthmoving equipment such as bulldozers. 43 CFR 3802.1-1.

The essence of appellant's contention on appeal is not that construction of the access route does not entail impairment of wilderness characteristics, but rather that construction of the road was authorized by his previously approved plan of operations. Thus, the issue is whether the reconstruction of the access road in 1983 is within the scope of the plan of operations approved in 1981.

A plan of operations is not required for "[m]aintaining or making minor improvements of existing access routes \* \* \* where such improvements or maintenance shall not alter the alignment, width, gradient, size or character." 43 CFR 3802.1-2(c). However, an approved plan of operations is a prerequisite to access improvement or maintenance which will alter width, gradient, size, or character. 43 CFR 3802.1-1(a). An approved plan will usually specify the details, standards, and conditions of the proposed activities for an access route. See 43 CFR 3802.4-2(b).

Godwin proposed in his first submitted plan of operations to both use existing access and construct new access. No details for construction or maintenance were provided other than a map showing the route of access.

When BLM issued its written approval of the submitted plan, it also ignored details for an access route except to condition Godwin's activities upon compliance with the specified mitigating measures. It appears that BLM's approval was intended to retroactively encompass the preapproval construction of the access road since, without such approval, the unauthorized access route would be difficult for BLM to manage. This may explain some of the lack of detail in the approved plan. Although the record is somewhat sparse, appellant has not challenged the substance of the report in the file which reveals substantial subsequent alteration of the road access in terms of the area of surface disturbance. Because it involves significant change in the width, gradient, size, and character, Godwin's enlargement of the road is subject to the requirement of submission of a plan of operations under 43 CFR 3802.1-1(a).

BLM's determination to require appellant to submit further bonding for his performance was discretionary. In determining the amount of the bond, the authorized officer is to consider the estimated cost of stabilizing and reclaiming all areas disturbed by the operations. 43 CFR 3802.2(a). Appellant has neither asserted nor shown error in this determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Gail M. Frazier  
Administrative Judge.

